

the instant case, the different inventions are patentably distinct because they are comprised of different elements and are produced by patentably distinct methods.

The invention of Group I is a genetically engineered living stent comprised of a population of adherent cells wherein at least one cell of the population of cells is transfected with an exogenous polynucleotide such that the polynucleotide expresses a product, whereas the invention of Group II is a living stent comprised of a population of adherent cells which have not been transfected with an exogenous polynucleotide. The transfection and expression of an exogenous polynucleotide conveys patentably distinctly characteristics on the invention of Group I compared to the invention of Group II which has not been genetically engineered to express an exogenous polynucleotide. In addition, the steps to produce Group I and Group II are necessarily patentably distinct since the method to produce the invention of Group I must include the transfection of cells.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Claims 6, 34, 48 and 72 are generic to a plurality of disclosed patentably distinct species comprising a stent wherein the population of cells is comprised of cells selected from the group consisting of fibroblasts, endothelial cells, smooth muscle cells, mesenchymal stem cells, hematopoietic stem cells, circulating stem cells, and any combination thereof. Each of the cell types listed is distinct and has distinct

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phenotypic, morphological and metabolic characteristics which would convey distinct unrelated properties to the living stent. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Claims 10, 38 and 52 are generic to a plurality of disclosed patentably distinct species comprising the genetically engineered living stent of claim 9, wherein the material is selected from the group consisting of cotton, polylactic acid, polyglycolic acid, a blend of polylactic and polyglycolic acid, cat gut sutures, cellulose, gelatin, dextran, and any combination thereof. Each of the materials listed is distinct and has distinct physical characteristics including pliability and tensile strength, for example, which would convey distinct unrelated properties to the living stent. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Claims 12, 40 and 54 are generic to a plurality of disclosed patentably distinct species comprising a stent, wherein the non-biodegradable material is selected from the group consisting of a magnetic material, a magnetizable material, a polypropylene, a TEFLON, a steel or a steel alloy, a titanium or a titanium alloy, a polystyrene, a glass, and any combination thereof. Each of the non-biodegradable materials listed is distinct and has distinct physical characteristics including pliability and tensile strength, for example, which would convey distinct unrelated properties to the living stent. Applicant

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is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Claim 17 is generic to a plurality of disclosed patentably distinct species comprising the genetically engineered living stent of claim 16, wherein the polypeptide is selected from the group consisting of an anti-GM-CSF, an anti-TNF, an anti-IL-1, an anti-IL-2, a nitric oxide synthase, a cyclooxygenase, a tissue plasminogen activator, a statin, a retinoblastoma family gene product, a E2F decoy, a AP-1 decoy, a cyclin-dependent kinase inhibitor, a I kappa B alpha, and any combination of the foregoing. Each of polypeptides listed is distinct from the other and belong to completely protein families. Each has distinct biological functions which would convey distinct and unrelated effects to the cells of the living stent. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura McGillem whose telephone number is (571) 272-8783. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura McGillem
6/30/2005


DAVID GUZO
PRIMARY EXAMINER